

No. 15155

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

ROBERT O. BLAND,

Appellant,

vs.

C. C. HARTMAN, as a Rear Admiral of the United States Navy and Commandant of the Eleventh Naval District of the United States Navy, and individually, WILLIAM H. SANDERS, JUNIOR, as a Captain of the United States Navy, and individually, JOE B. RENFRO, JUNIOR, as a Commander of the United States Naval Reserve, and individually, JAMES E. DYER, JUNIOR, as a Lieutenant Commander of the United States Naval Reserve and individually, and HEBER S. LEWIS, as a Lieutenant Commander of the United States Navy, and individually,

Appellees.

Appeal From the United States District Court for the
Southern District of California, Southern Division.

BRIEF FOR APPELLEES.

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Appellees.

Appeal From the United States District Court for the
Southern District of California, Southern Division.

BRIEF FOR APPELLEE.

Counter-statement of the Case.

This is an appeal by the plaintiff below from an order granting the motion of the defendants below to dismiss the complaint [Tr. 36].* Appellant was a commissioned officer in the United States Naval Reserve and served on active duty from 1942 to February 22, 1946, at which time he was *honorably separated from active duty* and transferred to inactive duty. From the time of his sepa-

*Page reference followed by * refers to typewritten transcript prepared by appellant.

ration from active duty to the date of the hearings herein he held the commission of Lieutenant in the United States Naval Reserve. On December 29, 1955, the Chief of the Bureau of Naval Personnel directed a letter to the appellant, together with a narrative statement of facts and interrogatories pertaining to the plaintiff's conduct subsequent to the separation from active duty, which indicated that appellant's retention in the Naval Reserve was not clearly consistent with the interests of national security. Upon demand of the appellant a hearing before a local security board consisting of the appellees and appointed by appellee C. C. Hartman was set for January 17, 1956. Appellant then filed a complaint in which he sought temporary restraining order and temporary and permanent injunction against further administrative hearings by the appellees, and for a declaratory judgment and mandatory order that plaintiff not be deprived of his status as an *honorably separated* veteran of World War II.

On the same date that the appellant filed his complaint he sought a temporary restraining order which was denied and the court issued an order to show cause for a preliminary injunction returnable January 19, 1956.

On or about January 11, 1956, plaintiff mailed to appellee Commandant C. C. Hartman his conditional resignation from the Naval Reserve [Tr. 10].*

On January 17, 1956, a hearing of the local security board was held, at which plaintiff was represented by appointed military counsel as well as civilian counsel.

On January 18, 1956, all papers pertaining to this appellant together with recommendations of the board and the district Commandant were forwarded to the Chief of

Naval Personnel in Washington, D. C. as prescribed by SecNavInst. 5521.6.

On March 14, 1956, after having taken the matter under submission and considering the briefs filed, the court entered judgment dismissing complaint [Tr. 126].**

Summary of Argument.

1. The District Court should have ruled that the entire matter under consideration was moot. The administrative proceedings which appellant desired to enjoin had been completed prior to the hearing on the motion to dismiss so that there remained nothing to be done by the appellees herein. All administrative processes set forth in SecNavInst. 5521.6 were completed insofar as appellees were concerned, and all papers were forwarded to the Chief of Naval Personnel, Washington, D. C., on January 18 [Tr. 29].¹ As stated by appellant, on March 21, 1956, appellant was given notice by the Secretary of the Navy that he was discharged under conditions other than honorable. It is readily and clearly apparent that any order issuing out of the court in this jurisdiction will have no effect.

2. SecNavInst. 5521.6, under which the security board hearings complained of by appellant were held, and under which appellant was finally discharged as a security risk, is a valid exercise of the authority vested by statute in the Secretary of Defense to direct and control the ad-

**Page reference followed by ** refers to transcript of record as certified by clerk of District Court.

¹SecNavInst. 5521.6 Attached hereto as Appendix 1.

ministration of the three Armed Services by their respective Secretaries (Act of August 10, 1949, 63 Stat. 578, 580, 5 U. S. C. 171a(c)(4)) and to prescribe procedures for the discharge of persons in the Armed Forces.

SecNavInst. 5521.6 provides that a personal hearing will be offered to the individual concerned, that he will be furnished military counsel upon his request and may select such counsel if the individual selected is reasonably available. Further, that he may have civilian counsel if desired and that the board will assist him in procuring witnesses.

3. Appellant has sought to enjoin one of the steps in an administrative proceeding and seeks that remedy from a court of equity stating that he will suffer irreparable harm should relief prayed for not be granted. On the facts presented in this appeal the appellant has nothing but vague and uncertain fears which on the state of the present record were speculative. Events which took place subsequent to the ruling on appeal here are of no consequence in a determination of the issues presented. The court properly found that the plaintiff had no grounds for injunctive relief, that he had not shown that he had suffered irreparable harm and that there had been no final and conclusive proceeding which had been determined to his detriment.

4. Appellant sought an order from the court in the nature of mandamus to compel appellees to give to him an honorable discharge if any were to be given. District

Court properly did not consider that such had stated a cause of action and it is apparent that the court realized that it had no jurisdiction to compel the Secretary of the Navy to issue the appellant a different type of discharge from that which he might receive. The civil courts have recognized that, as a matter of both constitutional policy and legislative intent, the Navy constitutes a specialized community governed by separate law from that which governs civilians and have refused to review the exercise of discretion vested by Congress in the Secretary of the Navy as to the type of military discharge to be issued to a member of the Naval Reserve under particular circumstances.

The trial court was correct in its statement that the time was not yet ripe for equity intervention.

5. Again the trial court properly ruled that the plaintiff has not shown that he has suffered any irreparable harm and he is not in fact in jeopardy of losing valuable property rights. In his complaint plaintiff lists in detail various types of rights which he fears he will lose. These fears are without foundation and on the state of the record are not only erroneous but premature.

ARGUMENT.

I.

The Entire Matter on Appeal Is Moot and Thus There Is No Case or Controversy Upon Which Orders of This Court or the Lower Court Might Operate.

In order to determine whether the matter is moot it is necessary to look at the complaint.

The complaint seeks two fundamental orders:

- (a) Injunctive relief against proceedings under SecNavInst. 5521.6, and
- (b) A declaratory judgment that appellant not be deprived of his status as an *honorably separated* veteran of World War II.

It is necessary in analyzing the complaint to determine the status of appellees. Appellee C. C. Hartman is the Commandant of the 11th Naval District and as such is the convening authority referred to in SecNavInst. 5521.6 (12(c)). The remaining appellees are members of the local security board appointed by the convening authority. The functions of the security board are to conduct a hearing, following which they are to make recommendations. The convening authority also makes recommendations. These recommendations are then forwarded to the Chief of Naval Personnel for further review by Bureau Security Board (SecNavInst. 5521.6(12)(h))).

On January 17, 1956, the hearing before the local security board was held and on January 18, 1956, all papers and recommendations pertaining to the appellant were forwarded by the convening authority to the Chief

of Naval Personnel in Washington, D. C. On January 19, 1956 the hearing on the order to show cause and the motion to dismiss were heard by the District Court.

As was set forth in the affidavit of C. C. Hartman, one of the appellees herein [Tr. 102]:**

“Insofar as my command in the 11th Naval District is concerned, all administrative processes set forth in SecNavInst 5521.6 have been fully complied with in every particular. No further recommendations, opinions or hearings will be held in regard to Robert O. Bland within my command, unless new orders from the Chief of Naval Personnel or the Secretary of the Navy are received. All orders presently in this regard heretofore have been carried out.”

Assuming, *arguendo*, that this court should order the matter sent down to the District Court reversing the order and judgment of dismissal, what could the District Court do by way of order? Could it issue an injunction to the appellees not to conduct hearings under 5521.6? Could it order the appellees to proceed no further?

Under the facts the answers to the questions posed above are patent.

It has never been contended seriously by appellant that the appellees herein named have any power whatsoever to grant any type of discharge to the appellant. Any such discharge must come directly from the Secretary of the Navy or the President of the United States. Further, as it will be pointed out, no attempt has ever been made to divest the appellant of his status as an *honorably separated* veteran of World War II.

II.

SecNavInst 5521.6 Is a Valid Order and Covers a Matter Exclusively Under the Jurisdiction of the Secretary of the Navy.

The question of loyalty of a member of the Naval Reserve is exclusively under the jurisdiction of the Secretary of the Navy and the authority for the issuance of SecNavInst 5521.6 is twofold. First, 50 U. S. C. 992(a) allows dismissal of a reserve officer upon recommendation of a board of officers. The causes for such discharges are not enumerated, however, a discharge on security ground would certainly seem to properly fall under this general authority.

Armed Forces Reserve Act of 1952, 66 Stat. 495, 50 U. S. C. A. 991 *et seq.*:

“DISCHARGE UNDER ARMED FORCES RESERVE ACT Part 6. Separation

Section 992—Limitation on discharges . . .

Officers with three years service

- (a) An officer of the reserve components who has completed three years of commission service shall not be involuntarily discharged or separated *except pursuant to the approved recommendation of a board of officers* convened by competent authority or the approved sentence of a court martial . . .

Character of discharge

- (c) A member of a reserve component discharged or separated for cause other than as specified in subsection (b) [not applicable] of this section shall be given a discharge under honorable conditions unless . . .

- (1) a discharge under conditions other than honorable is effected pursuant to the approved sentence of a court martial *or the approved findings of a board of officers convened by a competent authority . . .*" (Emphasis added.)

The second authority for the security program, and SecNavInst 5521.6 in particular, is derived basically from general authority vested in the Secretary of Defense over the Secretary of the Navy in accordance with 5 U. S. C. 171(a)(c)(4). Pursuant to such authority the Secretary of Defense issued Department of Defense Directive 5210.9.²

III.

Until There Has Been Final Administrative Action the Court Review of the Administrative Proceedings Is Improper.

Should the court not dispose of this matter on the basis that the entire matter is moot it is a fundamental principle of law as stated in *Reinicke v. Loper*, 77 Fed. Supp. 333 (Hawaii, 1948):

"Where matters peculiarly within the purview of an administrative body are before it for disposition, a court of the United States will not (other than by way of restraining order) enjoin the administrative process. . . ."

A petitioner must first exhaust available administrative relief before invoking the extraordinary remedies of a court of equity. *Batista v. Nicolls*, 213 F. 2d 20 (C. A.

²Department of Defense Directive 5210.9 is attached hereto as Appendix 2.

Mass., 1954); *Home Loan Bank Board v. Mallonee*, 196 F. 2d 336 (C. C. A. Cal., 1952).

Legislative intent that administrative remedies must be exhausted is spelled out in 5 U. S. C. A. 109(e) which section states that agency actions are reviewable by courts only where there has been a final agency action. Any preliminary procedural or intermediate agency action shall be subject to review upon the review of the final action.

The doctrine of exhaustion of administrative remedies requires not only the initiation of prescribed administrative procedures but it also requires that they be pursued to their appropriate conclusion and that final outcome be awaited before judicial intervention is sought. *Home Loan Bank Board v. Mallonee*, *supra*.

Administrative remedies must be exhausted before an injunction is sought in court even when it is argued that administrative regulations are unconstitutional. *Haymes v. Landon*, 115 Fed. Supp. 506 (D. C. Cal., 1953).

In the case of *Marshall v. Wyman*, 132 Fed. Supp. 169 (D. C. N. D. Cal., 1955), plaintiff sought a declaratory judgment of his rights to a certificate of honorable discharge from the Army. In that case the Army had conducted a hearing and had ordered plaintiff's undesirable discharge and plaintiff was discharged. Even in such a situation the court stated that plaintiff has not yet exhausted his administrative remedies. *A fortiori* it may be argued that where there has been no final decision of the administrative board and no discharge has been given

there has not been an exhaustion of administrative remedies.

Appellant relies heavily upon the holding in *Parker v. Lester*, 227 F. 2d 708. In the *Parker* case seamen were denied the right of employment by a summary finding by the Coast Guard Commandant following which they had a right to appeal to various boards. This action took from the plaintiffs the right to a livelihood. The court emphasized this in many points of the decision. They also stated that no adequate remedy of law existed, that damages to the plaintiff were irreparable and that Congress had made no provisions for review. In the present case there has been no final determination and plaintiff's case is subject to be reviewed *de novo* by a board in Washington, D. C. and should he ultimately receive an unfavorable discharge from the Naval Reserve he will not be deprived of his employment or any veterans benefits whatsoever.

In the *Parker* case the Coast Guard in California was actually keeping the plaintiffs off the ships, whereas in the present case there is no one within this court's jurisdiction taking any action relating to this appellant whatsoever, all administrative proceedings having been completed insofar as the appellant is concerned in this jurisdiction.

In the *Parker* case the court states that it has no right to review until there has been a final action and that until the administrative body has completed its

processes in the authorized manner they cannot be short circuited by an independent action for injunction. *Myers v. Bethlehem Shipbuilding Corp.*, 303 U. S. 41 (1938). Further, in the *Parker* case the courts stated that due process does not even require a hearing in the initial stages.

As will be seen by the reading of SecNavInst 5521.6, Section 12, it will be seen that the local board of which appellees were members was merely the first step in a chain of administrative proceedings. There is no basis for the conclusion drawn by appellant that the local security board could make only one type of recommendation. It is patent that the local security board might make one recommendation, the Commandant make another, Washington board still a different finding and finally another conclusion by the Chief of Naval Personnel or the Secretary of Navy. It is thus apparent that until there has been a determination adverse to the appellant, the appellant has suffered no harm and cannot be heard.

What appellant seeks is to prevent an initial stage of an administrative proceeding and further a mandamus, although not so-called by name, ordering the Department of the Navy to give to the appellant an honorable discharge. It seems almost too clear to require further analysis that the appellees named in this action have no authority to give the appellant any form of discharge, that duty being the sole responsibility of the Secretary of the Navy who is not a party to this action.

IV.

The Hearing of the Navy Board Is Not an Adjudication Which Is Within the Purview of the Administrative Procedures Act.

Where the selection or tenure of an officer or an employee of the United States is involved or in regard to the conduct of military naval or foreign affairs functions 5 U. S. C. A. 1004 of the Administrative Procedures Act does not apply.

V.

The Court Was Correct in Dismissing the Action for Lack of Jurisdiction.

The District Court correctly held that it lacked authority to compel the Secretary of the Navy to grant appellant a particular kind of discharge certificate.

It is established constitutional policy dating back to the early years of the Republic that the Judiciary will not interfere in the administration of military affairs. This policy is founded upon the constitutional separation of powers. The Constitution makes the President Commander in Chief of the Army and Navy (Art. II, Sec. 2); and "the Secretary of War is the regular constitutional organ of the President, for the administration of the military establishment of the nation; and rules and orders publicly promulgated through him must be received as the acts of the Executive and as such be binding upon all within the sphere of his legal and constitutional authority." *United States v. Eliason*, 16 Pet. 291, 301.

As stated in *Orloff v. Willoughby*, 345 U. S. 83, 94:

“We know that from top to bottom of the Army the complaint is often made, and sometimes with justification, that there is discrimination, favoritism or other objectionable handling of men but judges are not given the task of running the Army. The responsibility for setting up channels through which such grievances can be considered and fairly settled rest upon the Congress and upon the President of the United States and his subordinates. The military constitutes a specialized community governed by a separate discipline from that of the civilian. Orderly government requires that the Judiciary be scrupulous not to interfere with legitimate Army matters as the Army must be scrupulous not to intervene in judicial matters.”

The court stated earlier in *Reeves v. Ainsworth*, 219 U. S. 296, 306:

“ . . . The courts have no power to review. The courts are not the only instrumentalities of government. They cannot command or regulate the Army. To be promoted or to be retired may be the right of an officer, the value to him of his commission, but greater even than that is the welfare of the country, and it may be, even its safety, through the efficiency of the Army. . . . If it had been the intention of Congress to give to an officer the right to raise issues and controversies with the board upon the elements, physical and mental, of his qualifications for promotion and carry them over the head of the President to the courts, and there litigated, it may be, through a course of years, upon the assertion of error or injustice in the board's rulings or decisions, such intention would have been explicitly declared. The embarrassment of such a right to the service, indeed the detriment of it, may be imagined.”

In *Gentila v. Pace*, 90 App. D. C. 75, 77, 193 F. 2d 924, the court held that Congress did not intend any judicial review of a military discharge even where it was alleged that the type of discharge given was not in accordance with law or army regulations.

See also *Goldstein v. Johnson*, 87 App. D. C. 159, 184 F. 2d 343, where the court held that the District Court had no jurisdiction of an action for declaratory judgment and mandatory injunction to set aside a dishonorable discharge allegedly given in contravention of the Articles of War. To the same effect are *Stock v. Department of the Air Force*, 186 F. 2d 968 (C. A. 4); and *Reid v. United States*, 161 Fed. 469 (S. D. N. Y.). In *Levin v. Gillespie*, 121 Fed. Supp. 726 (N. D. Cal.) the court issued an injunction against discharging a soldier with an undesirable discharge. On the authority of *Nelson v. Peckham*, 210 F. 2d 574 (C. A. 4). Congress promptly nullified the *Nelson* decision by the Act of June 18, 1954 (68 Stat. 254, 50 U. S. C. App. Supp. II 1952 ed.), and the District Court in the *Levin* case thereupon vacated the injunction. Furthermore, the District Court which decided the *Levin* case subsequently ruled that it had no authority to compel the Army to issue a particular type of discharge. *Marshall v. Wyman*, 132 Fed. Supp. 169 (N. D. Cal.). The principle that courts may not control the exercise of discretionary judgment is equally applicable to actions for declaratory judgment. *Skelly Oil Co. v. Phillips Petroleum Co.*, 339 U. S. 667, 671-672; *Colegrove v. Green*, 328 U. S. 549, 551-552; *Miguel v. McCarl*, 291 U. S. 442, 452; *Doehler Metal Furn. Co. v. Warren*, 76 App. D. C. 60, 129 F. 2d 43, 45.

Accordingly, the District Court's dismissal of the complaint for lack of jurisdiction should be affirmed.

VI.

No Constitutional Right of Appellant Has Been Infringed.

(a) *No right secured to appellant by First Amendment has been infringed.* The only conceivable clause of the First Amendment on which appellant can rely is "Congress shall make no law . . . abridging the freedom of speech . . ." How appellant's freedom of speech was abridged by conducting a hearing under SecNavInst. 5521.6 and making certain recommendations with regard to a possible discharge from the Naval Reserve as a security risk is difficult to see.

The guarantees of the First Amendment do not prohibit the Secretary of the Navy from taking measures to separate from the Navy persons who in his judgment may compromise the national security. See *Bailey v. Richardson*, 86 App. D. C. 265, 182 F. 2d 63. Appellant is as free to express his opinions and political views as before he was in the Naval Reserve. His eventual discharge, if anything, will increase his measure of personal freedom.

Appellant's argument apparently is that he was given consideration for discharge as "punishment" for his beliefs and associations during a period when he was in the inactive Naval Reserve. That argument quite misconceives the reason for the hearing of the local security board. The hearing was conducted because it was believed that he was a *security risk*. His actions during the period he was in inactive Naval Reserve status were merely evidence from which the Navy could draw conclusions that he was a security risk *in the Navy Reserve*.

The Navy's legitimate concern with morale and discipline is sufficient justification, if one were needed, for its

policy of not giving security risks the same award of honorable service given exemplary Navy men. In the words of the Secretary of Defense:

“I don’t believe you can give anyone a dishonorable discharge for something he did before he was in the services. The best you can do is just get him back out again on some kind of a basis that neither puts your stamp of approval on him or gives him a dishonorable discharge. I think it is sort of an intermediate position you have got to use. I don’t think that anyone that is released because he is a security risk or disloyal should be classified and given an honorable discharge the same as millions of fine men that have fought for our nation and have given loyal service.” (Hearing before the Senate Committee on Armed Services, 83rd Cong., 2d Sess. on S. 3096, Doctor Draft Act Amendment, p. 44.)

Even if it be thought, in some manner not known to us, that giving appellant an undesirable discharge limited his freedom of speech, it was a limitation permissible under the First Amendment. *Garner v. Board of Public Works of Los Angeles*, 341 U. S. 716, 721; *Adler v. Board of Education*, 342 U. S. 485; *United Public Workers v. Mitchell*, 330 U. S. 75; *American Communications Assoc. v. Douds*, 339 U. S. 382.

(b) *Appellant has not been denied any rights under the Fifth Amendment.* The Fifth Amendment provides that no one shall be “deprived of life, liberty or property without due process of law.” Obviously a discharge less than honorable would not deprive the appellant of either his life or liberty. *Bailey v. Richardson*, 86 App. D. C. at 259, 182 F. 2d 57, so the question is whether it deprived him of “property.”

A less than honorable discharge from active duty does render the appellant ineligible for such veterans' benefits as mustering out pay, payment for accrued leave, preferences in Federal employment and homestead preferences, but these veterans' benefits, ". . . are gratuities. They involve no agreement of parties; and the grant of them creates no vested right." *Lynch v. United States*, 292 U. S. 571, 577; *Slocum v. Gray*, 86 App. D. C. 5, 8, 179 F. 2d 31, 34. Consequently appellant has not been deprived of any "property," whether by due process or not.

Further, appellant was not discharged from active duty and although he contends that he will lose valuable rights by being deprived of his status as an honorably separated veteran of World War II, this statement is misleading and false. At the time that appellant was placed on inactive duty his rights as an *honorably separated* veteran of World War II became fixed as to all of the sections cited by appellant as benefits which have accrued to him as the result of his service with the Navy from 1942 to 1946 [Tr. 6].* Such benefits therein became fixed at the time he was released from active duty under the specific provisions cited by appellant.

Federal real estate loan benefits accrued to "any person who shall have served in the active military or naval service of the United States at any time on or *after September 16, 1940*, and prior to the termination of the present war and who shall have been discharged or *released therefrom* under conditions *other than dishonorable*." (Emphasis added.) 38 U. S. C. A. 694.

Hospital, medical and burial benefits under Veterans Regulations 6(a) (38 U. S. C. A. (C. 12)) may be provided to "veterans of any war . . . not *dishonorably discharged*." (Emphasis added.)

Special taxation and loan benefits in the State of California accrue to certain categories of veterans under Article XII, Section 1¼ of the California Constitution and Section 800 Military and Veterans Code of California. The wording in both instances is substantially the same: that such benefits accrue to a wartime veteran who “received an honorable discharge . . . or who has been *released from active duty . . . under honorable conditions.*” (Emphasis supplied.)

Preferential employment status is granted to veterans by the United States and the State of California. Those entitled to Federal preferences are “those . . . who have served on *active duty* in any branch of the Armed Forces of the United States *during any war . . . and have been separated* therefrom under honorable conditions.” (Emphasis supplied.) 5 U. S. C. A. 851. California gives preference to veterans with the following qualifications:

“. . . The veteran must have been *released from* the service under conditions *other than dishonorable.*” (Emphasis supplied.)

Selective Training and Service Act of 1940. (Govt. Code, Secs. 18540, 18540.1, 18540.2, 18540.3, 18540.4, 18541, 18971, 18973 and 18974.)

Finally, considering the multitude of factors which may be properly taken into account in considering whether one in the military service is a security risk, the various acts and associations set forth in Defense Directive 5210.9 are as specific as could be reasonably be expected. No more precious and definite listing of relevant factors is possible or even necessary, hence, even if the constitutional doctrine of vagueness has any application to this

type of administrative instruction the requirements of that doctrine would be met. *Lichter v. United States*, 334 U. S. 742; *American Power Co. v. S. E. C.*, 329 U. S. 90, 104; *Sunshine Anthracite Coal Co. v. Adkins*, 310 U. S. 381; *Opp. Cotton Mills v. Administrator*, 312 U. S. 126; *Yakus v. United States*, 321 U. S. 414, 423-424; *United States v. Rock Royal Co-op*, 307 U. S. 533, 574; *Hampton & Co. v. United States*, 276 U. S. 393.

Accordingly the threat of a hearing and possible discharge other than honorable did not violate any of appellant's constitutional rights.

Conclusion.

The judgment below should be affirmed on the ground that issues presented herein are moot; that the District Court lack authority to compel the Secretary of the Navy to issue any particular kind of discharge; and that until all administrative processes were complete the matter was not ripe for equity intervention.

Respectfully submitted,

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APPENDIX 1.

DEPARTMENT OF THE NAVY
Office of the Secretary
Washington 25, D. C.

SECNAV 5521.6

Pers-18-sem

23 June 1954

SECNAV INSTRUCTION 5521.6

From: Secretary of the Navy

To: All Ships and Stations

Subj: Navy and Marine Corps Military Personnel Security Program

I. GENERAL

1. *Purpose.* The purpose of this Instruction is to revise and restate naval security policies and procedures with reference to acceptance, separation, retention, and assignment of Navy and Marine Corps personnel where credible information indicates their acceptance or retention may not be clearly consistent with the interests of national security.

2. *Cancellation.* SECNAV letter P1-6 dated 10 January 1949 (NDB Jan-Jun 1949, 49-15, p. 6), BUPERS Circular Letter 4-49 (NDB Jan-Jun 1949, 49-27, p. 109), and MARCORPS General Order 101 are hereby cancelled and superseded.

3. *Scope.* This Instruction is applicable to all personnel of the Navy and of the Marine Corps (including the Coast Guard when the Coast Guard is operating under the Department of the Navy), including Reserve components of both, officer and enlisted, active, retired, and inactive, and to all persons applying for appointment or

enlistment in, or in process of induction into, any component of the Navy or of the Marine Corps. The responsibility for implementation of this program is vested for members of the Navy, in the Chief of Naval Personnel, and, for members of the Marine Corps, in the Commandant of the Marine Corps.

4. *Pending Cases.* Cases already processed to the point of delivery to the individual of narrative statement and interrogatories, as of the effective date of this Instruction may be completed in accordance with previously existing instructions. Action on all other cases will be initiated or continued in accordance herewith.

5. *Policy and Standard.* The Department of the Navy holds that the standard for appointment, enlistment, or retention of any individual into, or in, any component of the Navy or of the Marine Corps shall be that his prospective or continued utilization in the naval service is clearly consistent with the interests of national security. As used herein, the term "national security" relates, inter alia, to the protection and preservation of the military, economic, and productive strength of the United States, including the security of the Government in domestic and foreign affairs against or from espionage, sabotage, and subversion, and any and all acts designed to weaken or destroy the United States.

6. *Criteria for Application of Standard.* In making determinations of consistency of service with the interests of national security, account shall be taken of the sensitivity of positions held and of those which the individual concerned might reasonably be expected to hold in the service throughout his continuation therein. In this connection, an officer or warrant officer of any component of

the Navy or Marine Corps holds a sensitive position by virtue of his commission or warrant, regardless of the duties and responsibilities of his assignment. Likewise, an enlisted member whose qualifications would normally require that he have access to classified information or material will be considered to hold a sensitive position regardless of the duties and responsibilities of his assignment.

7. *Classes of Activities, Associations, and Attributes To Be Considered in Applying Criteria.* The ultimate determination of whether acceptance into, or rejection from, service in the Navy or Marine Corps is clearly consistent with the interests of national security must be based upon an overall common sense evaluation of all available information concerning an individual. The activities, associations, and attributes listed below, whether current or past, and while not all inclusive, are of varying degrees of seriousness, and warrant initiation of action to effect such determination with regard to the hazard to national security actually presented.

a. *Activities, Associations, and Attributes of Primary Security Significance.* Activities, associations, and attributes of primary security significance include, but are not limited to, the following:

(1) Commission of any act of sabotage, espionage, treason, or sedition, or attempts thereat or preparation therefor, or conspiring with or aiding or abetting another to commit or attempt to commit any act of sabotage, espionage, treason, or sedition.

(2) Establishing or continuing a sympathetic association with a saboteur, spy, traitor, seditionist, anarchist, or revolutionist, or with an espionage or other secret agent

or representative of a foreign nation, or any representative of a foreign nation whose interests are inimical to the interests of the United States, or with any person who advocates the use of force or violence to overthrow the Government of the United States or the alteration of the form of Government of the United States by unconstitutional means.

(3) Advocacy of use of force or violence to overthrow the Government of the United States, or of the alteration of the form of Government of the United States by unconstitutional means.

(4) Membership in, or affiliation or sympathetic association with, any foreign or domestic organization, association, movement, group or combination of persons which is totalitarian, Fascist, Communist, or subversive, or which has adopted, or shows, a policy of advocating or approving the commission of acts of force or violence to deny other persons their rights under the Constitution of the United States, or which seeks to alter the form of Government of the United States by unconstitutional means. (An organization, movement, or group, officially designated by the Attorney General of the United States to be totalitarian, Fascist, Communist, or subversive, to advocate or approve forcible or violent denial of Constitutional rights, or to seek alteration of the form of Government of the United States by unconstitutional means, shall be presumed to be of a character thus designated until the contrary be established. However, it should also be noted that there are many organizations of a highly suspect character which have not been officially designated as subversive, and the nonappearance of a given organization on the Attorney General's list does not necessarily mean that the organization may not be subversive.)

(5) Performing or attempting to perform his duties, or otherwise acting, so as to serve the interests of another government in preference to the interests of the United States.

(6) Failure or refusal to sign loyalty certificate DD Form 98; pleading protection of the Fifth Amendment or of article 31, Uniform Code of Military Justice, in refusing to completely answer questions contained in DD Forms 98, 390, or 398; pleading protection of the Fifth Amendment or of article 31, Uniform Code of Military Justice, or otherwise failing or refusing to answer any pertinent question propounded in the course of an official investigation, interrogation, or examination, conducted for the purpose of ascertaining the existence or extent, or both, of conduct of the nature described in (1) through (5) above, and (7) through (13) below.

(7) Participation in the activities of an organization as a front for an organization referred to in (4) above, when his personal views were sympathetic to the subversive purposes of such organization.

(8) Participation in the activities of an organization with knowledge that it had been infiltrated by members of subversive groups under circumstances indicating that the individual was a part of, or sympathetic to, the infiltrating element or sympathetic to its purposes.

(9) Participation in the activities of an organization referred to in (4) above, in a capacity where he should reasonably have had knowledge of the subversive aims or purposes of the organization.

(10) Sympathetic association with a member or members of an organization referred to in (4) above.

(11) Currently maintaining a close continuing association with a person who has engaged in activities or associations of the type referred to in (1) through (8) above. A close continuing association may be considered to exist if the individual lives in the same residence as, frequently visits, or frequently communicates with, such person.

(12) Close continuing association of the type described in (11) above, even though later separated by distance, if the circumstances indicate that renewal of the association is probable.

(13) Any facts other than as set forth in subparagraph b below, which furnish reason to believe that the individual may be subjected to coercion, influence, or pressure which may cause him to act contrary to the best interests of national security. Among matters which should be considered in this category would be the presence of a spouse, parent, brother, sister, or offspring in a nation, a satellite thereof, or an occupied area thereof, whose interests are inimical to the interests of the United States.

b. *Activities, Associations, and Attributes Primarily Indicative of Military Unfitness.* There follows an outline of certain, but not all-inclusive, classes of activities, associations, and attributes, which, if present independently of any matters of the type outlined in subparagraph a above, should be considered in the first instance for disposition in accordance with other regulations and instructions. In cases wherein any of the following exist in combination with one or more of the matters set forth in subparagraph a above, the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, will determine whether, in the first instance, action shall

be initiated under this, or other, regulations and instructions. These activities, associations, and attributes are:

(1) Willful violation or disregard of security regulations.

(2) Intentional unauthorized disclosure to any person of classified information, or of other information disclosure of which is prohibited by law.

(3) Any deliberate misrepresentation, falsification, or omission of material fact.

(4) Any criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, habitual use of intoxicants to excess, drug addiction, or sexual perversion.

(5) All other behavior, activities, or associations which tend to show that the member is not reliable or trustworthy.

c. *Fraud.* Concealment of, misrepresentation with regard to, or failure fully to disclose, present or previous conduct or associations of the character set forth above, in making application for enlistment or appointment in any component of the naval service, is hereby denominated fraudulent, and action shall be taken in the naval service, or the facts made known to appropriate civil authority, as the law may provide in such cases.

8. *Investigative Responsibility.* The Director of Naval Intelligence is responsible for providing investigative coverage of the matters referred to in subparagraph 7a, subsections (1) through (13), in cases involving members or prospective members of any component of the Navy or Marine Corps. The Director of Naval Intelligence will also provide investigative assistance in the categories enumerated in paragraph 7b, when so requested. Con-

fidential informants and investigative techniques available to and utilized by Naval Intelligence will not be disclosed to the boards. However, Naval Intelligence will, whenever practicable, provide such information relating to the reliability of its sources as may be of assistance to the boards in arriving at a determination.

9. *Reporting of Information.* It shall be the duty of every member of the Navy and of the Marine Corps, regardless of status or component, to report to his commanding officer any information coming to his attention which indicates a probability of any activity, association, or attribute of the character outlined in paragraph 7 above on the part of any member of the Armed Forces, or which otherwise indicates that retention of such member may not be clearly consistent with the interests of national security. Commanding officers to whom such a report is made shall advise a representative of Naval Intelligence thereof at the first opportunity in the event the report encompasses any of the matters set forth in subparagraph 7a. When representatives of Naval Intelligence are not available without unreasonable delay or inconvenience, such reports shall be made directly to the Director of Naval Intelligence, Department of the Navy, Washington 25, D. C., via such direct media as best assure minimal publication of such information. No action should be taken, prior to consultation with a representative of Naval Intelligence, which might apprise any individual that he is under suspicion, regarding matters covered by subparagraph 7a, unless security of the command or the national interests render such action imperative.

II. SECURITY BOARDS

10. *General.* For the consideration and disposition of cases arising under this Instruction, security boards shall be established and variously utilized as herein directed or as circumstances may require. All officers of the Navy and Marine Corps, and components thereof, on active duty, except those serving on duty with Naval Intelligence, shall be eligible for membership on such boards. In addition, civilian officers (appointed by the President with the advice and consent of the Senate) of the Office of the Secretary of the Navy shall be eligible for membership on the departmental security boards, hereinafter described. In each case involving a possibility of recommendation by a security board for discharge or involuntary release from active duty, of a member of a Reserve component, the membership of such board shall include a majority of members of the same component and all members shall be senior to the member concerned.

a. *Local Security Boards.* These boards may be convened by commands authorized to convene general courts-martial when requested to do so by the Secretary of the Navy, the Chief of Naval Personnel, or the Commandant of the Marine Corps, as appropriate, and all such commands are hereby designated competent authority to convene boards of officers for these purposes. Such local security boards shall be composed of three or more officers subject to the jurisdiction of the convening authority. However constituted, such boards shall be directed to the end of obtaining factual findings and unbiased opinions by the members thereof that the individuals whose cases are under consideration are or are not persons whose continued services are clearly consistent with the interests

of national security. When separation of an individual is recommended, these boards shall render an opinion as to the type of discharge deemed appropriate.

b. *Bureau and Headquarters Security and Screening Boards.* These boards shall be convened by the Chief of Naval Personnel or the Commandant of the Marine Corps, as required, who are hereby designated as competent authority to convene boards of officers for these and other purposes. Such Bureau and Headquarters security boards shall be composed of three or more officers serving in the Bureau of Naval Personnel or in Headquarters, U. S. Marine Corps, or in bureaus or offices of the Department of the Navy. However constituted, these boards will variously function as initial, intermediate, or final administrative processing bodies, and as intermediate and final review bodies in consideration of cases arising under this Instruction. Actions which may be recommended by these boards shall include, but not be limited to, the following:

(1) Referral of cases to the Secretary of the Navy for consideration by a departmental security board; referral of cases to commands authorized to convene general courts-martial, or to commanding officers, for action under UCMJ or by local security boards.

(2) Acceptance, rejection, retention, promotion, termination of temporary appointment, separation from active duty, retirement, separation, granting and denial and revocation of security clearances, restriction and removal of restriction on duty assignments, characterization of separation, and other administrative action authorized by law with respect to members or prospective members of

the Navy or the Marine Corps, including components thereof, whose cases may be under consideration.

(3) Temporary assignment of individual members of the Navy or the Marine Corps to specially controlled duty pending further investigation or development of additional information. Indefinite assignment to such duty will be made only as prescribed by the Secretary of the Navy.

c. *Department of the Navy Security Boards.* These boards shall be convened by the Secretary of the Navy and shall be composed of three or more officers of the naval service. A civilian officer (appointed by the President with the advice and consent of the Senate) of the Office of the Secretary of the Navy may be appointed a member. However constituted, these boards may perform any of the functions of a local security board and/or a Bureau or Headquarters board and shall possess all of the powers and authority incident thereto. In addition, these boards may function as final review bodies with respect to cases which have been processed through Bureau or Headquarters security boards.

Referral of cases to these boards should be held to a minimum in instances other than those presenting substantial differences of opinion between or among members of other boards and/or convening and any reviewing authorities.

III. ADMINISTRATIVE AND BOARD PROCEDURES

11. *Initial Action.* Processing of a case coming under the purview of this Instruction will follow the administrative and board procedures outlined below:

a. On receipt of credible information reflecting doubt on the acceptance of persons for, or the continuation of

members in, the naval service from the viewpoint of interest of national security, the Chief of Naval Personnel or the Commandant of the Marine Corps may take such action as appears appropriate and/or such information may be presented to a Bureau or Headquarters security board.

(1) On the basis of a review of all pertinent information in such case the board will recommend appropriate action to the Chief of Naval Personnel or the Commandant of the Marine Corps. Such recommendations may include, but are not limited to, the following:

(a) That further investigation be undertaken; or

(b) That sufficient credible evidence having probative value is available and usable to warrant that court-martial proceedings be initiated; or

(c) That administrative action looking toward possible separation of the member be undertaken; or

(d) That an applicant be rejected; or

(e) That the case be closed, without prejudice to the individual, on the grounds that further processing under this Instruction appears unwarranted; or

(f) That the case be referred to the Judge Advocate General for consideration of referral thereof to appropriate Federal or State civil authority; or

(g) That specified other administrative action be undertaken.

(2) In each case in which a Bureau or Headquarters security board recommends that administrative action looking toward possible separation of the member be undertaken, said board shall render an opinion as to the

character and type of resignation (officer) or agreement to accept discharge (enlisted) to be offered to the member concerned in lieu of undergoing administrative processing.

(3) After consideration of the board's recommendations, by the Chief of Naval Personnel or the Commandant of the Marine Corps, such actions may be taken as he may deem appropriate, which may include, but are not limited to, the following:

(a) The member may be assigned to specially controlled duty pending completion of investigation or other administrative action.

(b) The member may be assigned or reassigned to normal duties with concomitant eligibility for such clearance by his commanding officer as may be required therefor.

(c) The case may be referred to the Secretary of the Navy for his consideration and concurrence or nonconcurrence with the approved recommendation.

(d) The appropriate command may be directed to initiate action with a view toward trial by courts-martial.

(e) The appropriate authority may be directed or requested to initiate administrative action as hereinafter described looking toward separation of the member.

(f) The applicant may be accepted or rejected as appropriate.

(g) Other administrative action be initiated.

12. *Hearing Procedures*

a. Should administrative action toward possible separation of an individual be recommended and approved,

the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, will request from the Director of Naval Intelligence, an unclassified narrative statement of fact as disclosed by investigation, together with unclassified written interrogatories drafted with a view toward giving the individual an opportunity to present, in a logically coherent manner, the matter within his knowledge corroborating, explaining, or tending to refute, assertions made or inferences arising from allegations made in the narrative statement of fact. The Director of Naval Intelligence shall not furnish such narrative statement of fact and interrogatories, however, unless and until he is satisfied that administrative processing of the individual concerned will not materially impede or compromise any impending prosecutions or investigations by any Federal agency. The Director of Naval Intelligence will cause to be forwarded to the appropriate district intelligence officer the individual's investigative case file or copies thereof. Such district intelligence officer shall make this case file available to the local security board, together with instructions governing its use and disclosure of its contents. Each member of the local security board shall study the file prior to the hearing of the case.

b. Upon receipt of the narrative statement of facts together with suitable interrogatories, the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, shall transmit such narrative statement of fact and interrogatories to an appropriate general court-martial convening authority, or to the individual concerned via the chain of command in case the local security board is convened at Bureau or Headquarters level. Such narratives and interrogatories are considered to be per-

sonal in nature and full consideration should be given to protecting the rights of the individual by privacy in administrative handling.

c. Such general court-martial convening authority, or the Chief of Naval Personnel, or the Commandant of the Marine Corps, as appropriate, shall transmit the narrative statement of facts and interrogatories to the individual concerned, and shall appoint a local security board. The letter of transmittal shall conform in substance to appendix 1 and in each case a personal hearing will be offered. The respondent will be furnished military counsel upon his request and may select such counsel, if the individual selected is reasonably available. Civilian counsel, if desired, will be at his own expense. The board will assist him in procuring witnesses who are reasonably available but he will not be entitled to reimbursement for expenses incurred incident to their appearance.

d. Officers of the naval service who desire to resign, or enlisted men who agree to accept discharge, after receipt of a narrative statement and interrogatories, in lieu of undergoing subsequent stages of administrative processing under this Instruction may forward a tender of resignation to the Secretary of the Navy or agreement to accept discharge to the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate. The tender of resignation or agreement to accept discharge will be in one of three forms: honorable, under honorable conditions, or under other than honorable conditions. Decision as to the form of tender or agreement to be offered to the respondent shall be made by the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, based on a careful evaluation of the nature

and extent of all the credible information available. When the narrative statement and interrogatories are transmitted to the member concerned he shall also be furnished a sample (enclosure (4) to appendix 1) of the form of tender or agreement, which, in the absence of later pertinent information, will be acceptable to the Department. In the event the member is informed hereunder that only a tender of a resignation or agreement to accept discharge under honorable conditions with a general discharge certificate or under other than honorable conditions is acceptable, he will be further advised that departmental authority has discretionary power to effect or direct separation in higher form, notwithstanding the form of submission, and that he may forward with such tender or agreement, a written statement in his own behalf, setting forth any matter which he desires to present for consideration by departmental authority.

e. If a response to the letter transmitting the narrative statement and interrogatory is received, accompanied by, or in the form of a resignation or agreement to accept discharge (substantially in the form of the sample offered) the command will forward the resignation or agreement and withhold further action pending Bureau or Headquarters instructions.

f. In any of the following cases, the command shall address a notice of hearing to the individual, conforming in substance to appendix 2. The board shall convene at the time and place stated in the notice, and shall conduct a personal hearing in accordance with the provisions of appendix 3, whether or not the individual has acknowledged notice of the hearing. In addition, specific procedures are outlined for each situation as follows:

(1) Upon lapse of the time allotted without receipt of any response from the individual concerned the local security board shall be so notified and thereafter convene and, on the basis of such information as is available, make findings, opinions, and recommendations regarding retention or separation of the individual and the type and character of separation if recommended.

(2) If a response to the letter transmitting the narrative statement and interrogatory is received with no request for a personal hearing, the local security board shall be so notified and thereafter convene and, on the basis of such information as is available, including the response above mentioned and any material presented at the hearing, make findings, opinions, and recommendations as above.

(3) If a response to the letter transmitting the narrative statement and interrogatory is received, with a request for a hearing, such request shall be granted.

g. The transmitting command is authorized to grant reasonable extensions of time to individuals in answering the narrative statement and interrogatories, or in appearing before the local security board. Department of Defense policy, however, limits the time which may be afforded the individual to present his cause to 15 days, and permits a period in excess thereof to be granted "only in case of a showing of vital need." This normal limit of 15 days is considered to include time allotted for both preparation of written response to narrative statements and interrogatories and preparation of any written and/or verbal presentation to be made by or on behalf of the individual concerned before any board. "Vital need" is deemed to preclude any extension to meet

the convenience of the individual concerned or counsel representing him. "Vital need" will include inability of the individual to attend a hearing by reason of serious illness, attested by certificate of a reputable attending medical practitioner, or desire to procure evidence or testimony, if it appears from an affidavit by the individual that such evidence would be uniquely material and could not be satisfactorily supplied by stipulation.

h. The convening authority shall review the record of the local security board, and may, to any extent deemed necessary, return the case to the board for revision, clarification, amplification, explanation, or reconsideration of its findings, opinions, or recommendations, or any aspect thereof. The convening authority may not, however, direct the board or any member thereof to return any revised finding, opinion, or recommendation which would be inconsistent with the clear intent of one which they or he have or has expressed. The record, together with the action and comment of the convening authority thereon shall be transmitted to the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, for further review by a Bureau or Headquarters security board.

i. After review, a Bureau or Headquarters security board shall make findings and render an opinion as to whether the retention in the service of the individual concerned is clearly consistent with the interests of national security. If such retention in the opinion of the board, be not clearly consistent with the interests of national security, the board shall recommend separation and shall render an opinion as to the type and character of such separation.

j. The Chief of Naval Personnel or the Commandant of the Marine Corps shall thereupon review the entire record, including the investigative file concerning the individual, and shall take or initiate action which may include, but not be limited to, the following:

(1) Initiate action to cause the individual to be separated from the service with an appropriate discharge in conformity with then existing law and regulations; or

(2) Cause the individual to be retained in the service with concomitant eligibility for such clearance by his commanding officer as may be required; or

(3) Forward the record, together with any comments or opinions or recommendations to the Secretary of the Navy for consideration of referral to the departmental security board.

k. The Secretary of the Navy, in cases which are referred to him, will, with or without referral to the departmental security board:

(1) Return the record to the Chief of Naval Personnel or to the Commandant of the Marine Corps, as appropriate, for final determination; or

(2) Direct the separation of the individual from the service with an appropriate discharge in conformity with then existing law and regulations; or

(3) Direct the retention of the individual in the service with concomitant eligibility for such clearance by his commanding officer as may be required.

13. *Effect of Final Decision.* Upon completion of review of cases arising under this Instruction, the decision of the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, or by the Secretary

of the Navy, shall be conclusive and binding throughout the naval service, in the absence of subsequently developed information substantially controverting the earlier finding.

a. The command having jurisdiction of the individual, or direct concern in the matter at issue, shall be notified of the final decision.

b. A copy of the entire record of each case shall be furnished the Director of Naval Intelligence for inclusion in the investigative case file pertinent thereto.

IV. REJECTION FOR ACTIVE NAVAL SERVICE

14. *Procedure With Regard to Applicants.* Each applicant for enlistment into any component of the Navy or Marine Corps shall be required to accomplish a DD Form 98 (Loyalty Certificate for Members of the Armed Forces) prior to his acceptance. Each applicant for appointment into any component of the Navy or Marine Corps shall be required to accomplish DD Forms 98 and 398, and 390 where required, prior to appointment. If any applicant fails or refuses to accomplish the forms in their entirety, or if any entry is made in the body of DD Form 98 other than "None" or "None to my knowledge," further action toward effecting the enlistment or appointment shall be discontinued, and all papers shall be transmitted direct to the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, with a letter report outlining in detail the circumstances surrounding the incident. Enlistment or appointment of the person concerned shall not thereafter be effected without the approval of the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate. In cases of rejection under this paragraph, report thereof shall be made to the Director of Naval Intelligence.

15. *Procedure With Regard to Reservists, Fleet Reservists, Fleet Marine Corps Reservists, and Inactive Retired Personnel Ordered Into the Active Naval Service.* Orders to each member of a Reserve component of the Navy or of the Marine Corps, fleet reservist, fleet Marine Corps reservist, and retired member voluntarily or involuntarily ordering him to extended active naval service shall, in the absence of determination to the contrary by the Chief of Naval Personnel or by the Commandant of the Marine Corps, as appropriate, contain a direction for the accomplishment of a DD Form 98 on reporting to the initial activity to which his orders require him to report for such duty.

a. Upon satisfactory accomplishment of DD Form 98, the activity at which it has been thus accomplished will include in its endorsement upon the individual's orders a statement to that effect, transmitting the executed DD Form 98 to the Chief of Naval Personnel or Commandant of the Marine Corps, as appropriate.

b. In the event of failure, or refusal, of an individual to complete a DD Form 98, or if he makes entries thereon which provide any basis for question as to the consistency of his retention on active duty with the interests of national security:

(1) Report thereof will be made to the Chief of Naval Personnel or Commandant of the Marine Corps, as appropriate.

(2) His orders will be endorsed to indicate such failure, refusal, or questionable entries made.

(3) His orders will further be endorsed to the effect that the unexecuted portion of his orders are suspended

and he will remain in an active-duty status at that activity pending any cancellation or modification of his orders by the Chief of Naval Personnel or Commandant of the Marine Corps, as appropriate.

c. Upon receipt of a report that an individual is being thus retained awaiting further instructions, the Chief of Naval Personnel or Commandant of the Marine Corps, as appropriate, will cause an immediate investigation of the individual to be made and may make such interim reassignments of the individual concerned as may be required to facilitate investigation, administrative convenience, or both.

(1) If the result of this investigation reveals prima-facie evidence that the individual has committed an offense, punishable by court-martial, while subject to the Uniform Code of Military Justice, and if the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, consider that the interests of the naval service and the national security would be best served by such action, the individual will be retained on active duty, and the proper command will be directed to institute proceedings under the Uniform Code of Military Justice.

(2) If after investigation, it is determined that action under the Uniform Code of Military Justice should not be taken, but there is probably cause for belief that his retention on active duty would not be clearly consistent with the interests of national security, he will be promptly released from active duty, and when appropriate, administrative proceedings prescribed in this directive will be instituted.

(3) If the investigation reveals that the failure or refusal to complete the DD Form 98 or the making of

any statement thereon, which would be the basis for question in the light of national security, was done or falsified with intent of avoiding active duty, the individual may be retained on active duty and placed under any restrictions with respect to assignments and access to classified information that may be required to protect the interests of national security. It should be kept in mind that such intentional acts of the individual to deceive are subject to disciplinary action under the Uniform Code of Military Justice.

16. *Opportunity for Reservists Not on Active Duty To Make Advance Disclosure.* Any reservist not on active duty who, in the event that he were subsequently ordered to active duty, (a) would fail or refuse to accomplish the DD Form 98, or (b) would make entries thereon which might be indicative of inconsistency with the interests of national security of his retention on active duty, may address a letter to the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, making full disclosure of the facts and circumstance involved. The making of such a disclosure by a reservist shall not affect the authority of the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, to order the reservist concerned to active duty, nor his obligation to comply fully and promptly with any orders which may be issued to him. However, such information will be forwarded to the Director of Naval Intelligence for proper investigative development. Upon completion of such investigation, the Director of Naval Intelligence will make report to the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, who will take action in accordance with this directive.

17. *Procedure With Respect to Inducted Persons.*

a. No person who is known or reasonably suspected, by any member of any component of the Navy or Marine Corps present at the time, to be a Communist will be inducted into the armed services by or with the assistance of such member, and each such member will promptly advise a responsible authority of the inducting activity of such information as he may have indicating that any person about to be inducted may be a Communist. No person who has been inducted and who is known or reasonably suspected to be a Communist shall be accepted for service in any component of the Navy or of the Marine Corps, except as indicated in b. below.

b. In each induction station which is now or may hereafter be in charge of or commanded by any member of any component of the Navy or the Marine Corps, each prospective inductee will be requested to execute a DD Form 98 prior to his induction. Any such person who fails or refuses to accomplish such form in its entirety, or who makes entries upon such form disclosing significant derogatory information with respect to his background, will be nonetheless inducted, and all persons inducted under the foregoing circumstances will be distributed between the Navy and the Marine Corps in assignments for service in substantially the same relative proportions as other inducted persons are at the time being assigned to those respective services. Inducted persons who are thus assigned to the Navy, the Marine Corps, or both, will be retained on nonsensitive assignments in the lowest pay grade permitted by law, pending completion of a thorough investigation. In event this investigation reveals that further retention would be inconsistent with the interests of national security.

(1) If the inducted person has failed or refused fully and faithfully to execute the DD Form 98 in its entirety, or has failed or refused to answer any question addressed him in the course of investigation pertaining to matters related to any of the questions asked in that form, he shall be separated under other than honorable conditions;

(2) If the inducted person has fully and truthfully executed the DD Form 98 in its entirety and has fully cooperated in the investigation of his case, he shall be separated, and the character of the separation shall be predicated upon the service performed.

c. Should the investigation disclose insufficient derogatory information to warrant separation in the interest of national security, the inducted persons concerned will be continued in the service. Those who refused to accomplish satisfactorily the DD Form 98 in its entirety will be continued on nonsensitive assignments; all others will be appropriately assigned. In each case, upon termination of the obligated tour of duty, the character of separation shall be predicated upon the service performed.

d. Officers of any component of the Navy or the Marine Corps, who are in charge of or command induction stations, will not induct or authorize the induction of any person as to whom they are advised by the Chief of Naval Personnel or the Commandant of the Marine Corps that investigation has substantiated sufficient derogatory information clearly to support a determination that the service of such person in any capacity would be inconsistent with the interest of national security.

18. *Special Procedures for Certain Civilian Doctors and Dentists Who Are Subject to Induction.* Doctors and

dentists who are subject to induction and who apply for and are denied commissions for security reasons, except for those who in connection with their application for a commission refuse to accomplish DD Form 98 in its entirety or plead protection of the Fifth Amendment in refusing to answer completely questions contained in DD Forms 98, 390, 398, or other related forms, will be given an opportunity to be heard before an appropriate board of officers (hearing board) prior to induction.

a. The responsibilities and functions of the Chief of Naval Personnel and the Director of Naval Intelligence as prescribed in this Instruction with regard to members of the Navy shall be likewise applicable to doctors and dentists within the purview of this paragraph, regardless of lack of service membership or status, except as hereinafter provided.

b. Prior to referral to a hearing board, the Chief of Naval Personnel shall cause to be reviewed, by a screening board appointed by the Secretary of the Navy, any information bearing upon the consistency with interest of national security of prospective employment upon active duty of a doctor or dentist within the purview of this paragraph. Such board shall make appropriate recommendations to the Secretary of the Navy via the Chief of Naval Personnel, which will include among other things, (a) whether the applicant should be tendered a commission, or (b) whether the case should be referred to a hearing board, and (c), if a hearing is recommended, the information to be included in the unclassified Narrative Statement of Fact (letter of allegations).

c. The Director of Naval Intelligence shall, upon being advised of the recommendations of the screening board

and Secretarial approval, prepare and transmit to the Chief of Naval Personnel a Narrative Statement of Fact and Interrogatories including the information recommended by the board, subject to the same provisions set forth in paragraph 12a, above, with reference to members of the service.

d. Prehearing and hearing procedures prescribed in paragraph 12 of this Instruction and in the appendixes shall be utilized, insofar as practicable, with appropriate modifications in forms, transmittals, notices, etc., to reflect the absence of service status on the part of the individuals under consideration.

e. In lieu of recommendations made with respect to members of the service, hearing boards considering cases of doctors and dentists within the purview of this paragraph will recommend, in the alternative, that the individual concerned be: (a) tendered a commission, (b) denied a commission, or (c) rejected for service in any capacity on the basis that such service would be inconsistent with the interests of national security.

f. The provisions of this paragraph are applicable to registrants having an obligation for service under subsection 4(i) only of the Universal Military Training and Service Act, as amended, as well as those having an obligation for service under subsections 4 (a) (b) and (i) of the aforementioned act.

19. *Subsequent Appointment or Enlistment of Persons Separated Hereunder.* No person who has been separated from any component of the Navy or of the Marine Corps under the provisions of this Instruction, and no person from any component of the Navy or of the Marine Corps under any other authority to avoid investigation

and/or board procedures under this Instruction, shall be subsequently appointed or enlisted in any component of the Navy or of the Marine Corps without specific prior approval thereof by the Secretary of the Navy. No person separated from any other armed service under the provisions of a directive of the service concerned corresponding to this Instruction, or who is reported by that service to have been separated therefrom under other authority while undergoing investigation under the provisions of such directive, will be appointed or enlisted in any component of the Navy or of the Marine Corps.

V. GENERAL ADMINISTRATIVE POLICIES

20. *Separation Processing—Form DD 214.* In each case wherein a member of any component of the Navy or of the Marine Corps is separated from an active-duty status pursuant to a determination that his continued service is not clearly consistent with the interests of national security, the DD Form 214 (Report of Separation) will cite this Instruction as authority.

21. *Delayed Compliance in Exceptional Situations.* In any case wherein there is reason to believe that departure or deviation from or temporary noncompliance with any provision of this Instruction is required in the interests of avoiding premature warning of suspects in a pending investigation, of avoiding compromise of confidential sources of information, or of facilitating in any way an important pending or contemplated investigation or prosecution, compliance herewith shall be delayed until such considerations no longer militate against action hereunder. All naval and Marine Corps commands are enjoined to comply fully with requests by the Director of Naval Intelligence (made either on behalf of his office or at the

behest of any other Federal investigative agency or agencies) for cooperation in respects such as those indicated, as well as for any other assistance in conducting any investigation pertaining to the national security.

22. *Notification of Federal Agencies.* The Director of the Federal Bureau of Investigation will be notified by the Director of Naval Intelligence of the names, last known address, and other pertinent information concerning persons denied enlistment or appointment, rejected from induction, or separated from the naval service in compliance with this Instruction. Similarly, the Civil Service Commission and Selective Service System will be notified by the Chief of Naval Personnel or the Commandant of the Marine Corps of persons so rejected from inductions.

23. *Security Clearances for Individuals Participating in the Administration of This Instruction.* Notwithstanding any other provisions or regulations, manuals, or instructions, a final Top Secret clearance is required, with the further requirement that, if clearance is not based on a satisfactory background investigation, such investigation has been duly initiated, for members of all boards appointed pursuant to this Instruction; security clearances required for other individuals participating in any phase of administration of this Instruction shall be commensurate with the classification assigned matter, material, or information being handled in each particular instance or case.

ALBERT PRATT

Assistant Secretary of the Navy
(Personnel and Reserve Forces)

APPENDIX 2.

7 April 1954

NUMBER 5210.9

(Seal)

DEPARTMENT OF DEFENSE DIRECTIVE

SUBJECT Military Personnel Security Program

References:

- (a) Joint Agreement of the Secretaries of the Armed Forces, Subject: Disposition of Commissioned and Enlisted Personnel of the Armed Forces of Doubtful Loyalty, dated 26 October 1948.*
- (b) Office of the Secretary of Defense Memorandum to Department Secretaries, Subject: Policy with Respect to Loyalty Examination of Inducted Persons and Disposition of Inducted Persons Determined to be or Suspected of Being Disloyal, dated 15 November 1949.*
- (c) Office of the Secretary of Defense Memorandum to Department Secretaries, Subject: Policy Concerning Military Personnel who are Considered Security Risks (M-11B-50), 19 February 1951.*
- (d) Presidential Executive Order 10450, Subject: Security Requirements for Government Employment, dated 27 April 1953.
- (e) Presidential Executive Order 10491, Subject: Amendment of Executive Order No. 10450 of April 27, 1953, Relating to Security Requirements for Government Employment, dated 13 October 1953.

*Will be cancelled by this directive.

I. PURPOSE AND SCOPE

A. *Purpose*

1. The purpose of this directive is to effect reissue with certain modifications of the various Armed Services directives to apply to military personnel the criteria for security programs established as national policy for civilian personnel by Executive Order 10450 as amended by Executive Order 10491.

2. This directive prescribes the standard and criteria for the separation of military members from the Armed Services in the interest of national security and the rejection of applicants for appointment or enlistment or of persons who would otherwise be inducted or involuntarily ordered into active military service whose acceptance into the services is not clearly consistent with the interests of national security. This is an administrative directive and does not preclude trial by court-martial when such action is considered appropriate by an Armed Service. It does not preclude separation on grounds other than security reasons under other applicable directives. Further, procedures pursuant to this directive should not be used in those cases in which security considerations are not the primary reason for initiation of action with a view toward separation.

B. *Scope*

This directive applies to all male and female commissioned officers, warrant officers, and all other members and prospective members of the Armed Services, including the Coast Guard when the Coast Guard is operating as a part of the Navy Department.

II. GENERAL POLICY

The Department of Defense will assume that the acceptance or retention of any member of the Armed Services is clearly consistent with the interest of national security unless and until a determination to the contrary is made by competent authority in the Armed Service concerned. However, when credible information which raises the question of security is received, action will be taken to determine whether acceptance or retention is consistent with the interests of national security. In no case will any person, reasonably believed to have at any time engaged in any of the activities listed in VII, C, 1, below, be appointed or enlisted in any of the Armed Services without the approval of the Secretary of the Armed Service concerned. Any member who is separated under the provisions of the appropriate Armed Service directive issued in implementation of this directive, or whose records reflect that he was separated under other authority while undergoing investigation under the provisions of such directive, will not be appointed or enlisted in any of the Armed Services at a later date without approval of the Secretary of the Armed Service concerned.

III. DEFINITION

National Security. As used herein, the term “national security” relates to the protection and preservation of the military, economic, and productive strength of the United States, including the security of the government in domestic and foreign affairs, against or from espionage, sabotage, and subversion, and any and all acts designed to weaken or destroy the United States.

IV. CANCELLATION

References (a), (b), and (c), above, are cancelled.

V. REPORTING OF INFORMATION

It shall be the duty of every member of the Armed Services to report to his commanding officer any information coming to his attention which indicates that retention of any member of the Armed Services is not clearly consistent with the interests of national security. Investigations by activities of the Armed Services will develop all relevant facts with special emphasis being given to that information which supports or refutes an allegation stemming from the criteria hereinafter described.

VI. DISPOSITION OF PENDING CASES

The processing of all security cases will be in accordance with instructions issued in implementation of this directive.

VII. STANDARD AND CRITERIA

A. *Standard.*

The standard for appointment, enlistment, or retention within the Armed Services shall be that on all the available information it is determined that the appointment, enlistment, or retention is clearly consistent with the interests of national security.

B. *Criteria for Application of Standard.*

An officer or warrant officer of the Armed Services holds a sensitive position by virtue of his commission or warrant regardless of the duties and responsibilities of his assignment. Likewise, an enlisted member whose qualifications would normally require that he have access to classified information or material will be considered to

hold a sensitive position regardless of the duties and responsibilities of his assignment. Nothing herein will serve to preclude temporary assignment to specially controlled duty as a security measure. However, indefinite assignment to such duty will be made only as prescribed by the Secretary of the Armed Service concerned.

C. *Application of Criteria.*

1. The ultimate determination of whether acceptance or retention in the Armed Services is clearly consistent with the interests of national security must be an over-all common sense determination based on all available information. The activities and associations listed below, whether current or past and while not all inclusive, are of varying degrees of seriousness and warrant initiation of action to effect such determination:

a. Commission of any act of sabotage, espionage, treason or sedition, or attempts thereat or preparation therefor, or conspiring with or aiding or abetting another to commit or attempt to commit any act of sabotage, espionage, treason, or sedition.

b. Establishing or continuing a sympathetic association with a saboteur, spy, traitor, seditionist, anarchist, or revolutionist, or with an espionage or other secret agent or representative of a foreign nation, or any representative of a foreign nation whose interests are inimical to the interests of the United States, or with any person who advocates the use of force or violence to overthrow the Government of the United States or the alteration of the form of Government of the United States by unconstitutional means.

c. Advocacy of use of force or violence to overthrow the Government of the United States, or of the alteration

of the form of Government of the United States by unconstitutional means.

d. Membership in, or affiliation or sympathetic association with, any foreign or domestic organization, association, movement, group, or combination of persons which is totalitarian, Fascist, Communist, or subversive, or which has adopted, or shows, a policy of advocating or approving the commission of acts of force or violence to deny other persons their rights, under the Constitution of the United States, or which seeks to alter the form of Government of the United States by unconstitutional means. (An organization, movement, or group, officially designated by The Attorney General of the United States to be totalitarian, Fascist, Communist, or subversive, to advocate or approve forcible or violent denial of Constitutional rights, or to seek alteration of the form of Government of the United States by unconstitutional means, shall be presumed to be of a character thus designated until the contrary be established).

e. Performing or attempting to perform his duties, or otherwise acting, so as to serve the interests of another government in preference to the interests of the United States.

f. Failure or refusal to sign loyalty certificate DD Form 98; pleading protection of the Fifth Amendment or of Article 31, Uniform Code of Military Justice, in refusing to completely answer questions contained in DD Forms 98, 390, or 398; pleading protection of the Fifth Amendment or of Article 31, Uniform Code of Military Justice, or otherwise failing or refusing to answer any pertinent question propounded in the course of an official investigation, interrogation, or examination, con-

ducted for the purpose of ascertaining the existence or extent, or both, of conduct of the nature described in a through e above, and g through m below.

g. Participation in the activities of an organization as a front for an organization referred to in d above, when his personal views were sympathetic to the subversive purposes of such organization.

h. Participation in the activities of an organization with knowledge that it had been infiltrated by members of subversive groups under circumstances indicating that the individual was a part of, or sympathetic to, the infiltrating element or sympathetic to its purposes.

i. Participation in the activities of an organization referred to in d above, in a capacity where he should reasonably have had knowledge of the subversive aims or purposes of the organization.

j. Sympathetic association with a member or members of an organization referred to in d above.

k. Currently maintaining a close continuing association with a person who has engaged in activities or associations of the type referred to in a through i above. A close continuing association may be considered to exist if the individual lives at the same address as, frequently visits, or frequently communicates with such person.

l. Close continuing association of the type described in k above, even though later separated by distance, if the circumstances indicate that renewal of the association is probable.

m. Any facts, other than as set forth in 2, below, which furnish reason to believe that the individual may be subjected to coercion, influence, or pressure which may

cause him to act contrary to the best interests of national security. Among matters which should be considered in this category would be the presence of a spouse, parent, brother, sister, or offspring in a nation, a satellite thereof, or an occupied area thereof, whose interests are inimical to the interests of the United States.

2. Separation Under Other Appropriate Directives or Regulations.

Persons who fall within the criteria prescribed below are examples of members whose retention may not be clearly consistent with the interests of national security. However, action will not be initiated to separate them under this security program unless the criteria set forth in VII, C, 1, above is also substantially involved and action under other Armed Service directives or regulations or the Uniform Code of Military Justice has been determined to be inappropriate.

a. Willful violation or disregard of security regulations.

b. Intentional unauthorized disclosure to any person of classified information, or of other information disclosure of which is prohibited by law.

c. Any deliberate misrepresentation, falsification, or omission of material fact.

d. Any criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, habitual use of intoxicants to excess, drug addiction, or sexual perversion.

e. All other behavior, activities, or associations which tend to show that the member is not reliable or trustworthy.

VIII. ADMINISTRATIVE POLICIES.

The Secretary of each of the Armed Services will prescribe procedures to be taken within his department to implement this directive. Procedures so established shall be governed by the following:

A. *Loyalty Certificate.*

The following persons will be required to accomplish a DD Form 98 (Loyalty Certificate for Members of the Armed Forces).

- * 1. Each applicant for appointment or enlistment *
- * prior to his appointment or enlistment. *
- * 2. Each inductee prior to induction. *
- * 3. Each member of a Reserve component of the *
- * Armed Services or retired member voluntarily or *
- * involuntarily entering upon a tour of extended active *
- * military service immediately upon reporting to the *
- * initial activity to which his orders require him to *
- * report for such duty. *

B. *Application for Appointment.*

The completed DD Form 98 and DD Form 398, and where applicable DD Form 390, will be attached as an inclosure to the application for appointment. If an applicant fails or refuses to accomplish the DD Form 98 in its entirety his appointment will be denied. If the DD Form 98 is completed with qualification or entries are made thereon which provide reason for belief that his appointment is not clearly consistent with the interest of national security, such appointment will be held in abeyance and the application and allied papers will be processed as may be directed by the Secretary of the Armed Service concerned.

C. *Application for Enlistment.*

If an applicant for enlistment fails or refuses to accomplish the DD Form 98 in its entirety, his enlistment will be denied. If the DD Form 98 is completed with qualifications or entries are made thereon which provide reason for belief that his enlistment is not clearly consistent with national security, such enlistment will be held in abeyance and the application and allied papers will be processed as may be directed by the Secretary of the Armed Service concerned.

D. *Members of Reserve Component of the Armed Services.*

If a member of a Reserve Component of any Armed Service voluntarily entering or being involuntarily called or ordered into active military service fails or refuses to accomplish the DD Form 98 in its entirety or makes entries thereon which provide reason for belief that his entry is not clearly consistent with the interests of national security, he will normally not be permitted to enter into active military service and procedures prescribed by the Secretary of the appropriate Armed Service with a view toward separation will be followed.

E. *Inductees.*

1. Known communists will not be inducted into the * Armed Services. The Federal Bureau of Investiga- *
* gation, Civil Service Commission and the Selective *
* Service System shall be notified promptly of their *
* rejection. *

* 2. Whenever a person who is being processed for *
* induction refuses to accomplish satisfactorily DD *
* Form 98 in its entirety further process of induction *
* may be postponed pending completion of a thorough *
* investigation. In the event this investigation reveals *
* that his induction would be inconsistent with the *
* interests of national security he will not be accepted *
* into the service. *

* 3. Whenever a person who is being processed for *
* induction discloses on his DD Form 98 significant *
* derogatory information with respect to his background *
* further process of induction may be postponed pend- *
* ing completion of a thorough investigation. In the *
* event this investigation reveals that his induction *
* would be inconsistent with the interests of national *
* security he will not be accepted into the service. *

4. Doctors and dentists who are subject to induction and who apply for and are denied commissions for security reasons, except for those who in connection with their application for a commission refuse to accomplish DD Form 98 in its entirety or plead protection of the Fifth Amendment in refusing to answer completely questions contained in DD Forms 98, 390, 398, or other related forms, will be given an opportunity to be heard before an appropriate board of officers (Hearing Board) prior to induction. Before any case is referred to a Hearing Board, however, it will be reviewed by an appropriate Screening Board appointed by the Secretary of the Service concerned. The Screening Board will operate in accord-

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ance with the procedures established by the Service Secretary concerned and will recommend to him, among other things, (a) whether the applicant should be tendered a commission, (b) whether the case should be referred to a Hearing Board, and (c) if a hearing is recommended, the information to be included in the letter of allegations. Hearing Boards will recommend that the applicant be (a) tendered a commission, (b) denied a commission but inducted in an enlisted capacity and used on non-sensitive assignments, or (c) rejected for service in any capacity on the basis that such service would be inconsistent with the interests of national security. These instructions are applicable to registrants having an obligation for service under subsection 4(i) only of the Universal Military Training and Service Act, as amended, as well as those having an obligation for service under subsections 4(a) (b) and (i) of the aforementioned Act.

F. *Separation of Members.*

1. Cases susceptible to resolution under court-martial procedure shall normally be so processed.

2. Where, for any reason, court-martial proceedings are inappropriate, impracticable, or inadvisable, administrative proceedings with a view toward separation of members whose continued service may not be clearly consistent with the interests of national security shall be initiated in accordance with applicable statutory authority.

3. In any administrative proceeding to separate a member of the Armed Services in the interest of national security, such member will be afforded an opportunity upon request to present any cause why he should not be so separated. Reasonable time will be afforded the member

to present his cause; however, a period in excess of 15 days may be granted only in case of a showing of vital need.

4. Administrative procedure, as directed herein, shall not be trials or adjudications, but shall be directed to the end of obtaining factual findings and unbiased opinions by boards of officers that the members under investigation are, or are not, persons whose continued services are clearly consistent with the interests of national security. These recommendations are subject to review by the Secretary of the Armed Service concerned. During any period of general mobilization the Secretary of the Armed Service concerned is authorized to delegate this review authority.

5. In cases where the approved findings and opinions of board of officers indicate that the continued service of a member of the Armed Services is not clearly consistent with the interests of national security, he shall be separated and the character of the separation shall be * predicated upon a careful consideration of all pertinent *
* factors including the gravity of substantiated derog- *
* atory information and the character of the service *
* performed. *

6. In the case of separation of any member of the Armed Services, under conditions outlined in the preceding subparagraph, the DD Form 214 (Report of Separation) will cite as authority the appropriate Armed Service directive under which separation is effected.

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7. If administrative proceedings hereunder culminate in findings by boards of officers, approved by competent departmental authority, to the effect that there is no reason for belief that retention of the member concerned is inconsistent with the interests of national security, such findings shall be conclusive and binding, and, may, in the absence of subsequently developed information substantially controverting the earlier findings, support assignment of the member to normal duties.

8. The actions and procedures adopted by each of the Armed Services in implementation of this directive shall emphasize and make specific provision for prompt and expeditious resolution of each case which may arise.

G. Assignment Restrictions.

During the period when a member of an Armed Service is under investigation for security reasons, and during the administrative processing of any case arising therefrom, the member will be placed under such restrictions with respect to assignments and access to classified information as are required to protect the interests of national security.

H. Control of Investigative Information.

The reports and other investigative material and information developed by investigations conducted pursuant to directives in implementation of this program shall remain the property of the investigative agencies conducting the investigations. Such reports and other investigative materials and information shall be maintained in confidence, and no access shall be given thereto to other departments and agencies conducting security programs without the prior approval of the Secretary of the Armed Service concerned.

I. *Cooperation with Investigative Agencies.*

All services will cooperate fully with Federal investigative agencies, and will avoid action tending prematurely to warn suspects that they are under suspicion or to compromise confidential sources of information. In cases presenting any substantial reason for belief that retention in the Armed Services may facilitate investigation and/or prosecution by Federal agencies, such retention may be effected notwithstanding any other provision of this directive. Similarly administrative procedures with a view toward separation as directed herein may be withheld for a reasonable period pending completion of necessary investigation and advice by the investigative agency concerned that its missions will not be hampered by institution of such procedures.

IX. ACTION REQUIRED

Armed Service directives and regulations implementing this directive will be coordinated to insure uniformity with respect to methods, procedures, and safeguards and forwarded so as to reach this office not later than 60 days from the effective date of this directive.

X. EFFECTIVE DATE

The effective date of this directive is 7 April 1954.

C. E. WILSON

Secretary of Defense

